

July 15. 1767.

A N S W E R S

F O R

CHARLES and PETER BLYTHS ;

T O T H E

PETITION of *George Anderson* Shipmaster
in *Dundee*.

THE respondents were, in the year 1764, engaged by *Robert Garrie* merchant in *Dundee*, to serve as sailors on board a ship called *The James and Margaret of Dundee*, *William Hackney* merchant in *Dundee* owner:—They continued in this vessel for about sixteen months, and performed a variety of voyages from *Dundee* to *Bourdeaux*, to *Limerick* in *Ireland*, to *New Port Pratt*, to the *Isle of Man*, to *Liverpool*, again back to *Limerick*, to *Havre de grace*, to *Campvere*, &c. *Robert Garrie* acted as supercargo, and *George Anderson*, the petitioner, as master and commander of the ship.

During all these voyages, the respondents received only some trifling partial payments, and upon their returning home, they justly demanded the residue of their wages, but they could obtain nothing but shifting, and evasive answers.—*Robert Garrie* the supercargo was insolvent, and laid up in jail, and, for reasons known to himself, he thought proper to break the prison of *Dundee*, and make his

his escape ; nothing, therefore, could be expected from that quarter.

Again *Hackney* the owner of the ship, and the petitioner the master thereof, entered into a most unjustifiable combination, to prevent the respondents from obtaining their wages ; for if they applied to *Hackney*, he told them, that he was neither the shipmaster, nor the person who engaged them ; and if they applied to the petitioner, they received for answer, that he was neither the owner, nor the person who hired them to serve on board the vessel.

In these circumstances, it is easier to imagine, than it is to describe the unhappy situation these poor sailors were in. They had no alternative ; indigent as they were, they behoved to have recourse to a law suit, as the only means by which they could break this unlawful combination betwixt the petitioner, the master of the vessel, and his owner *Hackney*.

They accordingly brought an action before the Judge of the High Court of Admiralty, concluding against the petitioner, for payment of the arrears of wages due to them, viz. to the respondent *Charles Blyth*, 18 l. 9 s. 2 d. sterling, and to the other respondent *Peter Blyth*, 5 l. 18 s. 8 d. sterling, agreeable to accmpts there produced.

Mr. *Hackney*, the owner, was resolved to stand by his shipmaster the petitioner, for whom he enacted himself as cautioner *de judicio fisci, et judicatum solvi* ; and when the cause came to be heard before the Judge Admiral, the petitioner was pleased to plead the following most notable defence : “ The defender denies that he engaged the pursuers, “ or made any agreement with them whatever ; he was “ master of the ship in which the defenders were engaged “ (as he is informed) by *Robert Garrie* merchant in *Dundee*, “ as agent for, and in name and behalf of *William Hack-* “ *ney* merchant in *Dundee*, in a voyage, &c.”

Admiral
decree,
page 6.

To

To this it was answered on the part of the respondents,
 “ That the pursuers entered on board the defender’s ship
 “ at *Dundee* ; and it is very true, they were hired by *Robert Garrie*, but it was not to serve under him, *Garrie*,
 “ but under the defender *Anderson*, as master of the ship :
 “ They accordingly went on ship-board, served under the
 “ defender as his servants ; and he so far homologated
 “ *Garrie’s* agreement, that he paid them part of their wa-
 “ ges.”

After a great deal of litigation on the part of the petiti-
 oner and his cautioner Mr. *Hackney*, the Judge Admiral,
 of this date, gave judgment in the following words : “ Ha-
 “ ving advised the said process, defences, answers, replies,
 “ duplies, petition, and answers, &c. and having consider-
 “ ed the act of parliament of the third year of his late
 “ majesty, regulating the government of seamen in the
 “ merchant service, finds, That in all cases, the master is
 “ liable in payment to the seamen of their wages, unless
 “ he can show that they have expressly freed him from that
 “ obligation : Therefore finds, that the defender is liable
 “ in payment to the pursuers, of the respective sums of
 “ wages libelled ; and decerns and ordains the said *George*
 “ *Anderson* defender, and the said *William Hackney* merchant
 “ in *Dundee*, his said cautioner *de judicio sisti, et judicatum*
 “ *solvi*, jointly and severally, to make payment to the said
 “ *Peter* and *Charles Blyths*, pursuers, of the following sums
 “ of wages libelled, due to them *respective, viz.* to the
 “ said pursuer *Charles Blyth*, of the sum of 18 l. 9 s. 2 d.
 “ *sterling*, as the balance of his wages, and to the said pur-
 “ suer *Peter Blyth*, of the sum of 5 l. 18 s. 8 d. *sterling*,
 “ as the balance of his wages, all in manner libelled : And
 “ as to the accompt of expences produced, modifies the
 “ same to the sum of 1 l. 8 s. 4 d. *sterling* ; and finds,
 “ that the defender is liable in payment to the said pursu-
 “ ers, of the said sum of 1 l. 8 s. 4 d. *sterling* of expences
 “ of

Jan. 17.
1766.

“ of procefs, as alfo, of the expence of extracting this
 “ prefent decree ;” which laft amounted to 3 *l.* 7 *s.* 8 *d.*
ftirling.

Another action was brought before the admiral court, at the inftance of *William Anderfon* and *William Hamilton*, who had been engaged to perform thefe voyages on board this vefſel at *Liverpool*, concluding againſt the petitioner for payment of their wages ; and, of equal date with the decree above mentioned, the judge-admiral decerned againſt the petitioner, and *Hackney* his cautioner, for payment of their wages : The defences were much the ſame as in the prefent action ; and the words of the judgment are in both caſes the ſame, *mutatis mutandis.*

Of both theſe decrees, the petitioner, and his cautioner Mr. *Hackney*, offered ſuſpenſions ; which, having paſſed, came to be diſcuſſed before the Lord *Kennet* Ordinary, who, Jan. 27. of this date, pronounced the ſame interlocutor on both the
 1767. ſuſpenſions : “ Having conſidered the foregoing debate, re-
 “ pels the reaſon of ſuſpenſion, as to the ſuſpender *George*
 “ *Anderſon* not being liable in payment of the wages ; or-
 “ dains him to give in a condeſcendence with reſpect to
 “ the failors alledged deſerting the ſhip, and of the time
 “ they continued with her ; and grants warrant for inci-
 “ dent diligence at the ſuſpender’s inſtance, to the 6th day
 “ of *February* next, for recovering vouchers of payment of
 “ the charger’s wages.”

The petitioner’s conduct was a little ſingular in the after management of the cauſe : He gave in no condeſcendence, in terms of this interlocutor ; he extracted his diligence, but he kept it in his pocket, and never execute it againſt any perſon ; and, upon the laſt day for reclaiming, he threw in a representation in each of the ſuſpenſions ; in which, he then, for the firſt time, alledged, that he was not maſter for the whole, but only for a part of the voyage ; 2do, That even granting him to have been maſter during

ring the whole voyage, he was not liable, in that character, either at common law, or upon the *British* statute, which was the foundation of the admiral's decree. And both these representations having been answered, the Lord Ordinary, of this date, refused the desire of both.

Feb. 26.
1767.

Upon the 13th of *June*, the petitioner gave in a representation in each of these causes, both which the Lord Ordinary immediately refused without answers. Upon the 26th of *June*, the petitioner presented to the Lord Ordinary a representation in the cause, with *William Anderson* and *William Hamilton*; in which he set forth, That he had a petition ready to give in to your Lordships, reclaiming against the Lord Ordinary's interlocutors in the cause with these respondents; and as the cases of these two suspensions were precisely the same, *mutatis mutandis*; therefore, he craved the Lord Ordinary would order that representation to be seen and answered; or, at least, supersede further advising, until the issue of the present question betwixt the petitioner and the present respondents.

The Lord Ordinary was, by this means, induced to give a deliverance on this representation, superseding further advising thereof until the 30th of *June*. His Lordship's intention, by this deliverance, plainly was with a view to wait until the fate of the petition against the respondents should be known, which would be moved to your Lordships in the interim. But your Lordships will observe what use the petitioner made of this deliverance; for he next day gave in a new representation to the Lord Ordinary in the cause with these respondents, which was immediately refused, and then in comes the petition now to be answered. The petitioner's motive is easily discovered: He wanted to divide this cause, imagining it was better to appear litigating with two of his sailors, than to come before your Lordships with the whole crew.

June 26.
1767.

June 27.
1767.

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But

But the respondents will not run out in complaints, however well merited, nor endeavour to excite compassion in the breasts of your Lordships, by painting the distressed situation of them and their families, owing to the unjustifiable opposition they have met with in this cause: They will endeavour, with all possible brevity, to obviate what is thrown out in the defender's petition.

But, in the *first* place, there is a preliminary question, which, in the respondents apprehension, is conclusive of the cause, *viz.* That the Lord Ordinary's interlocutor, upon advising the first representation and answers, was become final, and cannot now be reviewed by your Lordships; for that interlocutor of the Lord Ordinary's, was signed upon the 26th *February* last; the last day therefore, for reclaiming in terms of your Lordships act of federunt, was the 12th of *June*; but the petitioner does not present his representation until the 13th of *June*, when it was clearly incompetent, and which the Lord Ordinary, has no doubt, had in view, altho' both that and the subsequent representation, of the 27th *June*, are refused by his Lordship, simply without assigning any reason in the interlocutor. As, therefore, the judgment was become final before the second representation was given in, the after signature on the third representation of the 27th *June* last, refusing the same simply, and the signature by your Lordships, 2d *July* instant, ordering this petition to be answered, can neither of them vary the matter; the judgment was final before presenting of either, and therefore, this petition falls clearly to be refused as incompetent.

Altho' the respondents flatter themselves they might rest their cause there, they will, nevertheless, lay before your Lordships, what occurs in support of the Lord Ordinary's judgment, supposing the same could now be completely reviewed.

The

The petitioner tells your Lordships, that he was not master of the vessel, that *Robert Garrie* was the master, and hired all the failors; that the petitioner was only mate; that *Robert Garrie* left the ship at *Liverpool*, and the petitioner being next in commission, acted as master; but that he laid down, and *Garrie* resumed this office immediately upon his return; and that *Garrie* having been laid up in prison when the ship came to *Alloa*, the petitioner was again obliged to take the command, but still upon the same footing as formerly.

This is the story which the petitioner now tells; and a very different story, indeed, it is, from what he told in the former procedure: For when the cause depended before the Admiral, the petitioner durst not venture to deny his being master of the vessel, or to contradict a fact that was so notorious, as there was the fullest evidence of it before the judge, in another cause depending before his court.

Accordingly, the petitioner never disputed that fact, as your Lordships will see in almost every page of the Admiral's decree. Thus, on page 6th, your Lordships have his words as follows: "The defender denies, that he engaged the pursuers, or made any agreement with them whatever; he was *master* of the ship in which the pursuers were engaged." Page 7th, "The pursuers behaved in a most riotous and mutinous manner, not only refused to obey the defender *as master*, &c." Page 15th, "The petitioner does, with great submission, humbly apprehend it (*i. e.* the statute) does not apply to the present case, where the pursuers themselves admit they were not hired by the petitioner, the *master of the ship*, but by a third party." Page 16th, "Supposing, but not granting, that the petitioner, *as master*, were liable for what wages may be due to the pursuers upon the statute, &c."

In a word, in the whole course of defences, replies, reclaiming petitions, &c. before the admiral court, and in

no

no one line of the admiral decree, consisting of 20 pages, is it ever so much as once doubted or insinuated, that the petitioner was not master and commander of the ship; on the contrary, in a petition, of this date given in to the Admiralty court, (a copy whereof is hereto annexed) in another question relating to the loosing an arrestment of this very vessel when at *Alloa*, the petitioner, in whose name it is, designs himself "*George Anderson*, master of the ship the *James* and "*Margaret of Dundee*," he sets forth, that the petitioner's ship lies at present in the harbour of *Alloa*, and that *Robert Garrie*, at the instance of one of whose creditors she had been arrested, had no interest either more or less in the vessel; yet this *Garrie* is the person whom the petitioner now maintains the respondents must resort to for payment, and whom he falsely avers to have been master and commander of the ship.

It is submitted to your Lordships, if these proceedings before the Admiral, do not sufficiently point out the petitioner as master of this ship; and indeed it seems only a new conceit to deny it, which they never did in the former part of the proceedings; it never was denied before the Admiral, that the petitioner was the sole commander of the vessel; *Garrie* was only a sort of supercargo; he lived, indeed, aboard the vessel, as a passenger; but so far was he from acting as master, that he left the vessel altogether at *Limerick*, and went for *Dundee*; and when he met with the ship at *Campvere*, he was clapt in prison there; and the vessel, after having waited some days on his account, was at last obliged to sail without him.—And nothing can be more groundless than the alledgeance, that the petitioner was only mate; one *Oliphant* was the mate, and acted in that character.

It is hinted in the petition, that the respondents were at a loss against whom they should bring their action, and that at last they had pitched upon the most improper one of

of any. And, indeed, it must be evident to your Lordships, that these poor sailors were in a very hard situation when the vessel arrived at *Alloa*, they had been long at sea, themselves and families were depending on their wages, of which nothing but a trifle had been paid. It was to no purpose to apply to *Garrie*; he had been arrested for debt when at *Campvere*, he was again thrown into jail when he returned to this country, and made his escape by breaking the prison of *Dundee*. *Anderson* they had served under as their master, he had the command and charge of the ship during the voyage; it was natural, therefore, to consider him as primarily liable; nay, the action against him seems clearly founded, even upon the footing of his own acknowledgment; for he admits that he acted as master during part of the voyage.

Your Lordships have been informed of the interests of the different parties; *Hackney* was proprietor, *Garrie* supercargo, and the petitioner master of the ship: In different respects, therefore, they had all a considerable concern in the adventure; and, in this view, the respondents submit it to your Lordships, if they were not all conjunctly and severally, *et singuli in solidum*, liable to the sailors in their wages, by the *actio in rem versam*, or *negotiorum gestorum*, of the civil law. If any distinction was to be made amongst them, the master of the ship seems to be the person primarily liable; the favour due to commerce and navigation makes it requisite that it should be so. The proprietors of vessels are often situated in different and remote parts of the world. Sailors seldom enquire to whom a ship belongs; it is upon the master alone, with whom they are acquainted, and under whose immediate eye they perform their service, that they depend for payment; and nothing could be more destructive to the mercantile interest, than that he should be freed, and the mariners be obliged, in quest of
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their wages dearly earned, to ransack all the different corners of the earth.

But it is unnecessary to dwell upon this speculative question: It is as clear as sun-shine from the statute, as found by the admiral, daily conversant in maritime laws, "That in all cases, the master is liable in payment to the seamen of their wages, unless he can show they have expressly freed him from that obligation." The statute of the second of the late King, chap. 36. after enacting, that no master, or commander of any ship or vessel bound to any part beyond the seas, shall carry with them any mariners, excepting his apprentices, without first coming to an agreement with them, and that such agreement shall be reduced into writing, under the penalty therein set forth, contains the following clause: "And be it further enacted by the authority aforesaid, That upon the arrival of any ship or vessel into *Great Britain* from parts beyond the seas, the masters or commanders of such ships or vessels shall be, and they are hereby obliged to pay the seamen and mariners belonging to such ships or vessels their wages, if demanded, in thirty days after the said ships or vessels being entered at the custom-house, except in case where a covenant shall be entered into to the contrary, or at the time the said seamen or mariners shall be discharged, which shall first happen, if demanded; deducting out of such wages the penalties and forfeitures by this act imposed, under the penalty of paying to each seaman or mariner that shall be unpaid contrary to the intent and meaning of this act, twenty shillings over and above the wages that shall be due to each person, to be recovered by the same means and methods as the wages may be recovered; and such payment of wages, as aforesaid, shall be good and valid in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever."

In

In an after clause it is enacted, That in such an action, the seamen shall ly under no obligation of producing a written agreement as to their wages, that this shall be incumbent on the master: " And that no seaman or mariner shall fail in any suit, action, or process for recovery of wages, for want of such agreement or contract being produced, any law, usage, or custom to the contrary notwithstanding." This was at first a temporary statute; it was continued by 8th *George II.* chap. 21. to the 25th *March* 1749; by 23d *George II.* chap. 26. to the 26th *March* 1764; and at last, on account of its manifest utility, it was rendered perpetual, by an act in the second year of the present reign.

It is said in the petition, that the respondents themselves understood *Garrie* to be their paymaster; and that this appears from a letter of their own writing to *Garrie*, when the vessel was lying at *Campvere*.

A paragraph of this letter is quoted in the petition; the respondents, however, will lay the whole of the letter before your Lordships, it is addrest to *Robert Garrie*, bears date at *Campvere* the 7th *September* 1765, and is in these words,
 " Sir you talke of sailieng but we must know upon what
 " grovns first we must know whom is to pay us our wa-
 " ges before that we go and security for it we have been
 " here this five wikes and has been like no other body's
 " men not so much as wan drope of any thing nor no wan
 " would trust us upon this comical affair and now you
 " want us to go to sea as the sailm without a compt or
 " reckon nor no orders how to come by it so we desire
 " you would see to it before you offer to put to sea for
 " our wages is due every livering port you have no ar-
 " ticles of no voyage so it is diemandable every month
 " and as for us that does not belong to the place at this
 " reate we must go a *biggen* through *Fife* if we are served
 " so in every place you're the man that einged us all
 " and you're the man that must pay us, and if you do
 " not

“ not compt and clear we must see further about it our-
 “ selves we was at the prison and could not gait in so we
 “ desire an answer this night. Sir your humble servants”
 (Signed) *William Hamilton, Charles Blyth, James Petre*, and
 by *William Anderson's* mark.

Your Lordships will observe the situation these poor sailors were in, when this letter was wrote; *Garrie* who had engaged them, was in prison, and the crew ready to starve, expecting every moment they were to be set adrift, and the ship taken from them: In all trading vessels, there are two distinct superintendants, the one a supercargo, who properly speaking, is the trader, he buys and sells, has money intrusted with him for that end, and is generally a sharer in the adventure; the other the master and commander, whose province it is singly to manage the sailors, and to take charge of the vessel: In the first of these capacities, *Robert Garrie*, in the second the petitioner was employed; and when the ship was thus arrested, it was natural for the poor sailors to seek their wages from the supercargo or purse-bearer, who was supposed to have money in his hands, as he had drawn the freights.

The petitioner says, that *Garrie* gave the sailors a draught upon *Hackney* for their wages; but this was only an amusement, for *Hackney* never payed a shilling of it: this obliged the respondents to bring their action against the petitioner as master of the vessel: And your Lordships will observe Mr *Hackney's* conduct; he immediately takes the field along with the petitioner, becomes his cautioner, *de judicio fisci et judicatum solvi*, lays out the expence of conducting the litigation before the admiral, and after decree had gone against them there, a suspension is presented in name of both the petitioner and *William Hackney*.

Upon the whole, the case of these poor sailors has been exceeding hard, they have met with barbarous usage, they have

have been long kept out of their dear bought wages, by a combination formed to disappoint their just payment. This it is hoped, your Lordships will give a proper check to, by refusing the petition, finding the letters orderly proceeded, and decerning against this petitioner and his cautioner, with ample costs of suit.

In respect whereof, &c.

JOHN DOUGLAS.

Follows certified copy of a petition to the Judge Admiral, for *George Anderson* master of the *James and Margaret of Dundee*, referred to in the foregoing answers.

Unto

EDINBURGH, 24th NOVEMBER 1765.

Unto the Right Honourable the Judge of the High Court of
Admiralty,

T H E
P E T I T I O N
O F

GEORGE ANDERSON, Master of the
Ship THE JAMES AND MARGARET
of Dundee ;

HUMBLY SHEWETH,

THE petitioner's ship lies at present in the harbour of
Alloa, with a loading of coals bound for *Dundee*, for
the use of *William Hackney* merchant in *Dundee*, owner and
freighter of the said ship, who had wrote to Mr. *Watson* at
Alloa to load her with coals.—That when the petitioner
was about to sail, he was lately stopped upon an arrest-
ment, at the instance of *Robert Anderson* merchant in *Edin-
burgh*, against *Robert Garrie* merchant in *Dundee*, who has
no interest in the said vessel.

That upon representing these facts to your Lordship,
and producing a notorial copy of the above mentioned let-
ter from Mr. *Hackney* the owner and freighter, to Mr. *Wat-
son* at *Alloa*, your Lordship granted warrant to the petiti-
oner to sail to *Dundee*, and deliver his cargo, as appears from
the extracted act, and warrant herewith produced.

That

That the vessel is, of new, arrested at the instance of Mr. Robert Jamieson writer to the signet, against the said Robert Garrie, in virtue of an admiral precept, as appears from the copy of arrestment herewith produced.

That altho' your petitioner apprehends he might fail without regard to this arrestment, seeing Mr. Garrie has no interest in the vessel, yet he rather chuses to avoid the least cause of complaint, and once more to apply for your Lordship's warrant.

May it therefore please your Lordship, to allow your petitioner to proceed on the voyage to Dundee, there to deliver the cargo of coals, upon his enacting himself to retain the ship at Dundee, until the said arrestment, at Mr. Jamieson's instance, shall be loosed in due course of law.

According to justice, &c.

WILL. RICHARDSON.

Follows a Notorial Copy of the Letter, referred to in the foregoing Petition.

Dundee, 14th October 1765.

Mr. John Watson.

Sir, as I understand *The James and Margaret*, George Anderson master, is by this time load by you with coals, you'll please take his receipt for same, deliverable to me or order, and take his draught on me for the amount of same at
three

three months, payable either here or in *Edinburgh*, which shall be honoured by, Sir, your most humble servant,

(Signed) WILLIAM HACKNEY.

P. S. I need not tell you, that you must send his receipt to me.

Alloa, 23d *October* 1765, That the above is a just copy of the principal missive, signed by *William Hackney*, and addressed to *John Watson*, compared by me; and that the same agrees word for word, is attested by me notary public subscribing,

Quæ vera esse attestor,

(Signed) ALEX. NEWALL, N. P.

Edinburgh, 26th *February* 1767. That what is wrote on the two preceeding pages, are true copies of the petition, and notorial copy letter given in in process, *Jamieson* and *Garrie*, depending before the Judge of the High Court of Admiralty, and have been collated by me, depute clerk of the said High Court. Witness my hand, date above written,

ARCHD. INGLIS.

